

C.P. v. Blue Cross Blue Shield of Illinois
USDC (W.D. Wash.), No. 3:20-cv-06145-RJB

CONFIDENTIAL EXHIBIT

Filed Under Seal
Pursuant to Protective Order (Dkt. No. 25)

Exhibit B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF F WASHINGTON
AT TACOMA

C.P., by and through his parents,)
Patricia Pritchard and Nolle)
Pritchard and PATRICIA PRITCHARD,)
Plaintiffs,)
vs.) No. 3:20-cv-06145-RJB
BLUE CROSS BLUE SHIELD OF)
ILLINOIS,)
Defendant.)

ZOOM VIDEO DEPOSITION UPON ORAL EXAMINATION
OF
MARK LARSON, 30 (b) (6)

8:00 a.m.

June 28, 2022

REPORTED BY: Pat Lessard, CCR #2104

1 A. Yes.

2 Q. All right. And so are you aware that you're
3 here to testify on behalf of Blue Cross Blue Shield of
4 Illinois?

5 A. Yes.

6 Q. Okay. And you testified already that it's
7 part of HCSC.

8 So is it okay with you if we use those two
9 terms interchangeably, Blue Cross Blue Shield of
10 Illinois and HCSC?

11 MS. PAYTON: Object to the form.

12 A. Yes.

13 Q. (By Ms. Hamburger) When you're referring to
14 the company do you usually refer to HCSC?

15 A. Yes.

16 Q. All right. I'm going to show you --
17 hopefully you have in front of you Exhibit 1,
18 Plaintiffs' Exhibit 1.

19 (Referred Deposition Exhibit No. 1.)

20 MS. PAYTON: Could you remind me what it is?

21 MS. HAMBURGER: It's the Amended Notice of
22 Deposition.

23 MS. PAYTON: We have it.

24 Q. (By Ms. Hamburger) Before we get started,
25 other than the exhibits in this matter do you have any

1 Q. Did you talk to any people other than your
2 attorneys?

3 A. No.

4 Q. Okay. Did you review any transcripts of any
5 other depositions?

6 A. No.

7 Q. Okay. You mentioned that your team was
8 involved in the production of some of the documents in
9 this matter.

10 What were the documents that were produced
11 that your team was involved in?

12 A. So we produced an Excel document, or I think
13 we turned it into a PDF document that showed Medicare
14 premiums and how we track it from our financial system
15 in a document and the Medicare premiums that we
16 receive from CMS.

17 We also would have produced that annual
18 statement and also there's another document that we
19 produce that comes from HHS that documented the ACA
20 risk adjustment funds that were by year.

21 I believe that was it.

22 Q. Okay. So now I think you testified that all
23 the lines of business of Blue Cross Blue Shield of
24 Illinois are part of HCSC, right?

25 MS. PAYTON: Object to the form of the

1 question.

2 A. Yes. Again, Blue Cross Blue Shield of
3 Illinois is a division of HCSC, yes.

4 Q. (By Ms. Hamburger) And is that true for the
5 other Blue Cross Blue Shield programs that are part of
6 HCSC?

7 MS. PAYTON: Object to the form.

8 A. Yes.

9 Q. (By Ms. Hamburger) Okay. What are the
10 other state Blue Cross Blue Shield programs that are
11 part of HCSC?

12 A. We do business as Blue Cross Blue Shield of
13 Texas, Blue Cross Blue Shield of Montana, Blue Cross
14 Blue Shield of New Mexico and Blue Cross Blue Shield
15 of Oklahoma.

16 Q. Okay. Are there any other d/b/as that
17 Health Care Service Corporation operates under?

18 MS. PAYTON: Object to the form.

19 A. No.

20 Q. (By Ms. Hamburger) And does HCSC do any
21 other business other than health coverage work?

22 MS. PAYTON: Object to the form.

23 A. So again, we sell insured health products
24 and uninsured health products.

25 And then there's also -- I think we have

1 some long-term care products, so whether you class all
2 that as health.

3 Q. (By Ms. Hamburger) HCSC is not in the
4 business of selling auto insurance, correct?

5 A. Correct.

6 Q. Or homeowners insurance, is that right?

7 A. Correct.

8 Q. It focuses on health coverage, is that
9 right?

10 A. Yes.

11 Q. Okay. You said you're here to testify about
12 the federal financial assistance received by
13 Blue Cross Blue Shield of Illinois which is topic 6a.

14 Can you describe the ways in which HCSC or
15 Blue Cross Blue Shield of Illinois receives federal
16 financial assistance?

17 A. Yes. So we receive federal funds for our
18 insured Medicare products, our insured Medicare Part D
19 products. Also -- I mean not directly from the
20 federal government but Medicaid.

21 We also have Medicaid contracts that a
22 portion of that would typically be federally funded.

23 Then we also would receive federal funds as
24 part of our insured ACA product and our ACA small
25 group product.

1 Q. Just to be clear for the record, when you
2 say "ACA" I'm assuming you mean the Affordable Care
3 Act, is that right?

4 A. Correct.

5 Q. So you said the insured ACA individual and
6 small group products?

7 A. Right.

8 Q. Anything else?

9 A. That is it.

10 Q. Okay. And so let's talk about the Medicare
11 payments, okay?

12 A. Okay.

13 Q. Tell me what are those payments? What form
14 do they come in?

15 A. I'm not sure what you mean by form.

16 Q. So I think you testified earlier that you
17 get -- that Blue Cross Blue Shield of Illinois or HCSC
18 receives Medicare premium payments from CMS, is that
19 right?

20 A. That's correct, yes.

21 Q. Okay. And any other kinds of payments that
22 HCSC receives related to Medicare?

23 A. Yes. There would be in certain cases and on
24 the product the member could have a premium that they
25 also pay to Blue Cross Blue Shield of Illinois.

1 Q. Okay. Any other way in which Blue Cross
2 Blue Shield of Illinois or HCSC receives payments
3 related to Medicare from the federal government?

4 A. No.

5 Q. Okay. And then let's talk about Medicaid.
6 You mentioned that indirectly HCSC receives
7 federal financial assistance through Medicaid
8 contracts, is that right?

9 MS. PAYTON: Object to the form.

10 A. Yes. Indirectly, yes.

11 Q. (By Ms. Hamburger) Okay. And is that in
12 the form of premiums or some other kind of payment?

13 A. So the Medicaid contracts that we have are
14 with the state, so the premium, full premium comes
15 from the state. So it's the state paying Blue Cross
16 Blue Shield of Illinois.

17 Q. Okay. So the state pays the premium and the
18 funding from the state comes in part from CMS, is that
19 right?

20 A. That's correct.

21 Q. Okay. And then for the insured ACA
22 individual payments tell me how those payments are
23 made.

24 A. They're made from CMS.

25 Q. From CMS directly to HCSC?

1 A. Correct.

2 MS. PAYTON: Object to the form.

3 A. Correct.

4 Q. (By Ms. Hamburger) And what are those
5 payments? Are they premium payments?

6 A. Correct, yes.

7 Q. And is it fair to say that the CMS payments
8 subsidize the payments made by consumers for the
9 individual market coverage?

10 A. Ask that again, please.

11 Q. Yeah. Is it fair to say that the CMS
12 payments in this context subsidize the premium
13 payments made by individual market enrollees?

14 A. Yes.

15 Q. This is what's commonly referred to as the
16 Exchange Subsidy, right?

17 A. Correct, yes.

18 Q. Okay. And so then in the insured small
19 group products what is that payment?

20 A. It's the same payment, just from CMS, again
21 for the ACA small group business.

22 Q. So it's another subsidy?

23 A. Yes.

24 Q. And you had mentioned earlier the risk
25 adjustment payment.

1 Is that -- do you recall mentioning that?

2 A. Yes.

3 Q. Okay. Is that separate from the subsidies
4 in the individual and small group markets that HCSC
5 receives?

6 MS. PAYTON: Object to the form.

7 A. No. It's all part of that program or part
8 of that product.

9 Q. (By Ms. Hamburger) Is there any funding for
10 risk adjustments that HCSC receives that's outside of
11 a subsidy for small group and individual market
12 premiums?

13 MS. PAYTON: Object to the form.

14 A. No.

15 Q. (By Ms. Hamburger) All right. I want to
16 turn your attention to section -- oh, wait, let's look
17 at the annual statement.

18 So I'm going to put on the screen.

19 Exhibit 44. Hold on. It will take a few minutes
20 because it's so big.

21 (Marked Deposition Exhibit No. 44.)

22 Q. (By Ms. Hamburger) I'm going to share my
23 screen.

24 All right. Can you see the annual
25 statement?

1 Q. Okay. And on page 12360 that's on the
2 screen, this is the attestation about the annual
3 statement, is that right?

4 MS. PAYTON: Object to the form.

5 A. Correct.

6 Q. (By Ms. Hamburger) Okay. Let me just
7 scroll down here.

8 While I'm doing that, since 2016 has HCSC
9 received Medicare and Medicaid and ACA payments from
10 the federal government?

11 A. You said since 2016?

12 Q. Correct.

13 A. Yes.

14 Q. Okay. And just to understand here on page
15 12367 in the annual report for 2019 there's a listing
16 of various lines of business.

17 Do you see that?

18 A. Yes.

19 Q. And it talks about Medicare and Medicaid.

20 Do you see that?

21 A. Yes.

22 Q. Okay. And so that reflects some of the
23 direct business that HCSC has with the federal
24 government, is that right?

25 A. Correct. Those lines of business.

1 Q. Okay. And also the federal government, HCSC
2 provides federal employee health benefits, correct?

3 A. Correct.

4 Q. Okay. And a Medicare supplement, correct?

5 A. Correct.

6 Q. And then here under ten and eleven where it
7 says "Life and Property Casualty" there's no line of
8 business for that, is that right?

9 A. Correct.

10 Q. Okay. All right. I want to draw your
11 attention to Exhibit 6.

12 (Referred Deposition Exhibit No. 6.)

13 MS. PAYTON: What is that, Ele?

14 MS. HAMBURGER: That is the assurance.

15 MS. PAYTON: Got it.

16 Q. (By Ms. Hamburger) All right. Have you
17 seen Exhibit 6 before?

18 A. Yes.

19 Q. Can you tell me what it is?

20 A. It's an Assurance of Compliance.

21 Q. And do you know why -- well, is this signed
22 by someone at HCSC?

23 A. Yes.

24 Q. Okay. And do you know why this was signed?

25 A. It's my understanding it's signed as part of

1 participating in the Affordable Care Act for the ACA
2 individual and small group business.

3 Q. So it's a condition of participating in the
4 program?

5 A. Yes.

6 Q. Okay. And does this signature on behalf of
7 HCSC bind Blue Cross Blue Shield of Illinois?

8 A. Ask that once more, please.

9 Q. It's signed by HCSC. Do you understand
10 whether it binds Blue Cross Blue Shield of Illinois?

11 A. Yes.

12 Q. And what is your understanding of the
13 promises made in this document?

14 MS. PAYTON: Object to the form.

15 A. My understanding is that it's an assurance
16 that we're complying with the items that are listed on
17 there.

18 Q. (By Ms. Hamburger) Okay. And if HCSC did
19 not sign this assurance would it have been able to
20 participate in the Affordable Care Act Exchange?

21 MS. PAYTON: Object to the form.

22 A. I don't know the answer to that.

23 Q. (By Ms. Hamburger) Okay. Fair enough.

24 Is it voluntary for the HCSC to participate
25 in the Affordable Care Act Exchange?

1 A. Yes.

2 Q. Okay. Are you aware of whether HCSC has a
3 Section 1557 workgroup?

4 A. I'm not aware.

5 Q. Okay. Well, let me ask you this. Does HCSC
6 undertake efforts to comply with this assurance in
7 Exhibit 6?

8 MS. PAYTON: Object to the form.

9 A. To my knowledge, yes.

10 MS. HAMBURGER: All right. I want to draw
11 your attention to Exhibit 41.

12 (Marked Deposition Exhibit No. 41.)

13 MS. HAMBURGER: That is Blue Cross
14 Blue Shield's answer to the complaint.

15 MS. PAYTON: Yeah. It's printed out. We
16 have it.

17 THE WITNESS: I'll take my jacket off here.
18 I'm ready. Thank you for being patient.

19 MS. HAMBURGER: No problem.

20 Q. (By Ms. Hamburger) Do you have Exhibit 41
21 in front of you?

22 A. Yes.

23 Q. Can you turn to page 13, paragraph 102.

24 Okay. Do you see in there that it says
25 Blue Cross Blue Shield is without knowledge that it is

1 a "covered health program or activity" because, in
2 Paragraph 102, Plaintiffs cite to no legal authority
3 supporting this allegation and Blue Cross Blue Shield
4 of Illinois therefore denies this phrase.

5 Do you see that?

6 A. Yes.

7 Q. And does Blue Cross Blue Shield of Illinois
8 take the position that it is not subject to -- that it
9 is not a covered health program or activity under
10 Section 1557 of the Affordable Care Act?

11 MS. PAYTON: Object to the form.

12 A. Ask that again, please.

13 Q. (By Ms. Hamburger) Yes. Does Blue Cross
14 Blue Shield of Illinois or HCSC take the position that
15 it is not a covered health care program or activity
16 subject to Section 1557 of the Affordable Care Act?

17 MS. PAYTON: Object to the form of the
18 question.

19 A. I think for the lines of business for the
20 ACA individual and ACA small group, I mean we are
21 participating in that and that's under Section 1557.

22 Q. (By Ms. Hamburger) So continue.

23 A. No, that's it.

24 Q. So is it your testimony that HCSC and
25 Blue Cross Blue Shield of Illinois is a covered health

1 program or activity under Section 1557 of the
2 Affordable Care Act because it participates in the ACA
3 individual market and small group markets?

4 MS. PAYTON: Object to the form.

5 A. Yeah. Again, I'm not sure what the
6 definition of the covered health program or activity
7 is under that section.

8 So I mean, again, I'm going to answer -- I
9 mean we are participating, certainly, in the ACA
10 individual and small group that is under Section 1557
11 of the Affordable Care Act.

12 Q. (By Ms. Hamburger) And Blue Cross
13 Blue Shield of Illinois and HCSC have pledged in the
14 assurance I showed you earlier to comply with the
15 non-discrimination requirements of the Affordable Care
16 Act, is that right?

17 MS. PAYTON: Object to the form.

18 A. Correct.

19 Q. (By Ms. Hamburger) And then in the last
20 sentence in this paragraph it says "Blue Cross
21 Blue Shield of Illinois denies that its activities as
22 a third-party administrator are subject to
23 Section 1557 of the Affordable Care Act."

24 Do you see that?

25 A. Yes.

1 Q. Is that Blue Cross Blue Shield of Illinois's
2 position?

3 A. Yes.

4 Q. And it's that position even though.
5 Blue Cross Blue Shield of Illinois is part of HCSC, is
6 that right?

7 MS. PAYTON: Object to the form.

8 A. Yes.

9 Q. (By Ms. Hamburger) Including its activities
10 as a third-party administrator are part of HCSC?

11 MS. PAYTON: Object to the form.

12 A. Yes. It's a line of business. It's another
13 line of business for us.

14 Q. (By Ms. Hamburger) Okay. It's a line of
15 business that's still part of HCSC, is that right?

16 MS. PAYTON: Object to the form.

17 A. Yes.

18 Q. (By Ms. Hamburger) Do you know the reason
19 why HCSC or Blue Cross Blue Shield of Illinois
20 believes its third-party administration line of
21 business is not subject to Section 1557?

22 MS. PAYTON: Object to the form of the
23 question.

24 You can answer but you can't answer anything
25 that you know from legal counsel.

1 A. Yeah. I can't say I can answer that. And I
2 mean I'm not -- I think that's more of a legal
3 question for our legal area.

4 Q. (By Ms. Hamburger) Apart from legal advice
5 do you have any knowledge as to why HCSC or Blue Cross
6 Blue Shield of Illinois claims that its third-party
7 administration line of business is not subject to
8 Section 1557?

9 MS. PAYTON: Object to the form.
10 Same instruction as the last question.

11 A. No, I don't.

12 MS. HAMBURGER: Let's just take a quick
13 break. I think I might be done.

14 So if you give me five minutes.

15 THE VIDEOGRAPHER: We're going off the
16 record at 8:38 a.m.

17 (Recess.)

18 MS. HAMBURGER: Okay. I don't think I have
19 any more questions.

20 We can just go back on the record to close
21 it out.

22 THE VIDEOGRAPHER: One moment, please.

23 We're back on the record at 8:42 a.m.

24 MS. HAMBURGER: Thank you, Mr. Larson. I
25 don't have any more questions. I appreciate your time